



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

BARNES et al

Atty. Ref.: 124-1104; Confirmation No. 4650

Appl. No. 10/522,988

TC/A.U. 2814

Filed: February 2, 2005

Examiner: A. Kalam

For: OPTOELECTRONIC DEVICES

* * * * *

September 8, 2009

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO RESTRICTION REQUIREMENT

This is responsive to the Restriction Requirement mailed August 6, 2009 (Paper No. 20090803), the date of response to which is September 8, 2009 (September 6, 2009 falling on a Sunday and September 7, 2009 falling on a Federal holiday).

The Examiner alleges that the above-identified application contains claims directed to more than one species of the generic invention. Specifically, the Examiner alleges that the claimed invention has two separate species disclosed – one directed to a light emitting device and another directed to a light detection device. Applicants respectfully traverse the restriction requirement based upon emission and/or absorption because these are not two different classes of diodes.

It is well known that a diode can be operated in emission or absorption modes and therefore there are not two different species of diodes. If one forward biases a light emitting

diode, it emits light, i.e., “emission.” If one reverse biases a diode, light falling upon it is absorbed to create electron-hole pairs which are swept away by the applied bias before they can recombine to produce light for re-emission. Consequently, a reverse biased diode absorbs light. The operation of the diode is controlled by it being either a forward bias or a reverse bias diode. However, the structure is no different and therefore the claims are not restrictable amongst two different and artificially created species.

In accordance with the Patent Office requirement that Appellant elect a single purported species, Applicant elects with traverse the purported species of Species I directed to a light emitting diode.

The Examiner alleges that claims 11, 14, 15, 17 and 19 are generic. This indication of generic claim language in Applicant’s application is very much appreciated. However, Applicant notes that, if one applies the Examiner’s emission/absorption distinction in order to create two different species, claim 11 is not generic of both emission and absorption species. Claim 11 contains the limitation that “surface plasmon (SP) polariton modes . . . are substantially Bragg scattered into propagating light.” Thus, claim 11 specifies “emission” and while it would be included in the Examiner’s purported “Species I,” it does not cover, at least according to the Examiner’s definition, Species II directed to “absorption.”

Accordingly, Applicant elects with traverse claims 1, 2, 4, 6-8, 10 and 11 readable on the Examiner’s Species I and claims 14, 15, 17 and 19 which are generic of the Examiner’s Species I and Species II.

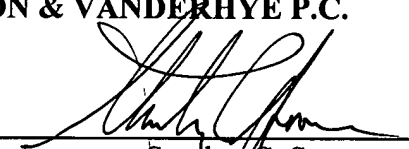
As noted above, the restriction requirement is respectfully traversed for the grounds noted above.

Having responded to all objections and rejections set forth in the outstanding Official Action, Applicant believes that elected claims 1, 2, 4, 6-8, 10, 11, 14, 15, 17 and 19 are in condition for allowance and notice to that effect is respectfully solicited. In the event the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact applicant's undersigned representative.

Respectfully submitted,

NIXON & VANDERHYTE P.C.

By: _____


Stanley C. Spooner
Reg. No. 27,393

SCS:kmm
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100